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In re Application of LOINTIER et al	:	
U.S. Application No.: 10/500,228	:	
PCT Application No.: PCT/FR02/04589	:	
Int. Filing Date: 30 December 2002	:	
Priority Date Claimed: 28 December 2001	:	DECISION
Attorney Docket No.: 80350-1230	:	
For: MULTIPLE-POUCH INTRAGASTRIC	:	
BALLOON, SURGICAL DEVICE FOR	:	
EXPANDING SAID BALLOON AND	:	
METHOD FOR MAKING SAME	:	

This is in response to applicant's "Renewed Petition Under 37 C.F.R. §1.47(a) " filed 23 December 2005.

BACKGROUND

On 30 December 2002, applicant filed international application PCT/FR02/04589, which claimed priority of an earlier France application filed 28 December 2001. A copy of the international application was communicated to the USPTO from the International Bureau on 10 July 2003. The thirty-month period for paying the basic national fee in the United States expired on 28 June 2004.

On 25 June 2004, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 16 November 2004, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that an oath or declaration in compliance with 37 CFR 1.497 must be filed.

On 11 May 2005, applicant filed a petition under 37 CFR 1.47(a).

On 03 June 2005, this Office mailed a decision dismissing the 11 May 2005 petition.

On 23 December 2005, applicant filed the present renewed petition under 37 CFR 1.47(a).

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by: (1) an oath or declaration by each applicant on his or her own behalf and on behalf of the nonsigning joint inventors, (2) factual proof that the missing joint inventors refuse to join in the application or cannot be reached after diligent effort, (3) the fee set forth in §1.17(i), and (4) the last known addresses of the nonsigning joint inventors.

Applicant has previously satisfied items (1) and (3) above.

With regard to item (2) above, MPEP 409.03(d) states in relevant part,

Where a refusal to sign the application papers is alleged, the circumstances of this refusal must be specified in an affidavit or declaration by the person to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.

Before a refusal can be alleged, it must be demonstrated that a bona fide attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the nonsigning inventor for signature. A copy of the application papers should be sent to the last known address of the nonsigning inventor, or, if the nonsigning inventor is represented by counsel, to the address of the nonsigning inventor's attorney.

When there is an express oral refusal, that fact along with the time and place of the refusal must be stated in the affidavit or declaration. When there is an express written refusal, a copy of the document evidencing that refusal must be made part of the affidavit or declaration.

When it is concluded by the 37 CFR 1.47 applicant that a nonsigning inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in the affidavit or declaration. If there is documentary evidence to support facts alleged in the affidavit or declaration, such evidence should be submitted. Whenever a nonsigning inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the affidavit or declaration.

The petition states that joint inventor Alain Jean Charles Verdier refuses to sign the application papers. The petition does not adequately demonstrate that a bona fide attempt was made to present a copy of the application papers to Verdier for signature. The copy of the letter purportedly sent to Verdier on 29 December 2004 will not be considered until an appropriate English translation is provided. Furthermore, the petition does not provide sufficient evidence of Verdier's purported refusal to sign. In particular, the petition does not include affidavits from the various people with firsthand knowledge of the alleged attempts to secure Verdier's signature. The copy of the 20 June 2005 agreement signed by Verdier fails to identify the present application. Furthermore, the agreement merely indicates that Verdier has renounced his rights to the invention, not that he refuses to sign the application papers. Additionally, the statement in

the agreement and in the petition that Verdier is not in a position to claim scientific or technical contribution raises the question as to whether Verdier is properly named as an inventor in the present application. If Verdier is not an inventor, a proper petition under 37 CFR 1.497(d) should be filed. For the reasons above, it would not be reasonable to conclude at the present time that Verdier refuses to join in the application.

With regard to item (4) above, the petition does not state the last known address of the nonsigning inventor.

CONCLUSION

For the reasons above, the renewed petition under 37 CFR 1.47(a) is DISMISSED without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Extensions of time are available under 37 CFR 1.136(a). Failure to timely file a proper response will result in abandonment of the application. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)". No additional petition fee is required.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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